

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rules I through XI and the)
amendment of ARM 37.110. 238)
pertaining to the production and sale)
of cottage food products)

TO: All Concerned Persons

1. On July 30, 2015, the Department of Public Health and Human Services published MAR Notice No. 37-717 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1008 of the 2015 Montana Administrative Register, Issue Number 14.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 2, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The 64th Montana Legislature passed House Bill 478 which grants a person the ability to make food in their home kitchens and then sell this food directly to consumers if registered and approved by the regulatory authority as a cottage food operation. House Bill 478 also extends the department's rulemaking authority regarding cottage food operations and directs the department to adopt administrative rules consistent with the legislative intent of the bill. The bill further removes statutory licensing fees for retail food establishments from 50-50-205, MCA, and directs the department to set these fees by rule according to retail food establishment complexity. The eleven above-described new rules are necessary to ensure that the cottage food industry in Montana is administered in a way that is safe to the public and so consumers in Montana do not suffer adverse health effects from consuming food made by the cottage food industry. The proposed amended rule is necessary to set licensing fees for retail food establishments.

4. In addition to the proposed new rules, the department is proposing an amendment to ARM 37.110.238 to regulate the establishment of licensing fees for retail food establishments that are not temporary food establishments or cottage food operations. The proposed fees, which mirror the amounts presently charged pursuant to 50-50-205, MCA, are \$85 for operations with two or fewer employees

and \$115 for all others. The department is extending the comment period until 5:00 p.m. on September 4, 2015.

5. The department proposes to amend the following rule, new matter underlined, deleted matter interlined:

37.110.238 LICENSES (1) and (2) remain the same.

(3) Except for temporary food establishment permit fees set by the local health authority in accordance with 50-50-205(6), MCA, license fees are:

(a) \$85 for each license issued to an establishment that does not have more than two employees working at any one time; and

(b) \$115 for establishments with more than two employees.

(3) through (13) remain the same, but are renumbered (4) through (14).

AUTH: 50-50-103, MCA

IMP: 50-50-103, 50-50-201, 50-50-204, 50-50-205, 50-50-206, 50-50-207, 50-50-208, 50-50-209, 50-50-210, 50-50-211, 50-50-212, 50-50-213, 50-50-214, 50-50-215, MCA

ARM 37.110.238

This proposed amendment to ARM 37.110.238 sets a licensing fee of \$85 for operations with two or fewer employees and \$115 for all others. This proposed amendment does not apply to temporary food establishments or cottage food operations.

ARM 37.110.238, which implements HB 478's movement of the licensing fees for retail food establishments from statute to rule, leaves licensing fees at the same amounts that are now found within 50-50-205, MCA. There are presently 4327 establishments in the state that pay the \$115 licensing fee for a total amount of \$497,605. There are a further 3419 smaller food establishments that pay the \$85 licensing fee for a total \$290,615. Because ARM 37.110.238 merely changes the location of the licensing fee, this rule amendment will have no fiscal impact on local health departments.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 4, 2015. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Richard H. Oppen
Richard H. Oppen, Director
Public Health and Human Services

Certified to the Secretary of State August 17, 2015.